



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/153499

PRELIMINARY RECITALS

Pursuant to a petition filed November 15, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on December 12, 2013, at West Bend, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly seeks to recover an overissuance of BC+ benefits from the Petitioner in the amount of \$1,191.87 for the period of May 1, 2013 – August 31, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Julie Williamson

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.

2. Petitioner received BC+ benefits during the period of May 1, 2013 – August 31, 2013. For the overpayment period of April, 2013 – August, 2013, the Petitioner received \$367/month in FS benefits. This was based on monthly household income of \$369.54 from child support payments.
3. On February 4, 2013, the agency issued a Notice of Decision to the Petitioner informing her that she was eligible for BC+ benefits effective March 1, 2013. It also informed the Petitioner that she was required to report if her income exceeded \$1,292.50/month and that such change was required to be reported within 10 days.
4. On February 18, 2013, the Petitioner started a new job with [REDACTED]. On August 9, 2013, the Petitioner reported the new job to the agency.
5. On August 22, 2013, the agency received verification of the Petitioner's employment from her employer and a detail of actual gross wages earned for the period of February, 2013 – August, 2013. The Petitioner earned the following gross wages:
 - February, 2013 \$1,028.30
 - March, 2013 \$2,143.90
 - April, 2013 \$1,609.27
 - May, 2013 \$3,146.73
 - June, 2013 \$3,304.32
 - July, 2013 \$2,414.61
 - August, 2013 \$1,902.07
6. On August 26, 2013, the agency issued a Medicaid/Badgercare Overpayment Notice to the Petitioner informing her that the agency intends to recover an overissuance of BC benefits in the amount of \$1,191.87 for the period of April 1, 2013 – August 31, 2013.
7. On August 26, 2013, the agency also issued a Notice and Repayment Agreement for Medical Assistance/Badgercare/Badgercare Plus Overpayment. The notice informed the Petitioner of the right to a hearing on the issue of the BC overpayment if an appeal is filed within 45 days of the notice.
7. On November 15, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by an agency concerning MA, including BC, must be filed within 45 days of the date of the action. Wis. Stat. § 49.45(5). The Petitioner's appeal was filed 81 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

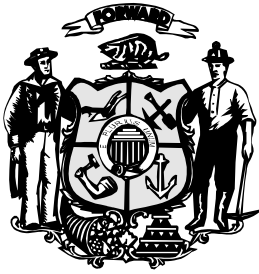
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of February, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 3, 2014.

Washington County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability